


EXHIBIT A

Blackburn, DeClement

 Associates, P.C. Attorneys at Law

Harry R. Blackburn*+~

May 29, 2008

Of Counsel
Federico Calof-LeGrand~

*Also Admitted in NJ

+Also Admitted in CT

~Admitted Only in PR

Via Electronic and First Class Mail
and Electronic Filing

Honorable Joseph J. Farnan, Jr.
United District Court for the
District of Delaware
Lockbox 18
844 N. King Street
Wilmington, DE 19801

Direct Dial
Ext. 102
email: hblackburn@hblackburn.com

REPLY TO:
MEDFORD OFFICE

RLI Insurance Company v. Indian River School District, et al.
United States District Court for the District of Delaware
Civil Action No. 1:05-cv-00858-JJF
Our File No. 729.004

Dear Judge Farnan:

As your file will reflect, this office represents RLI Insurance Company, the Plaintiff in the above-captioned matter.

This case is scheduled for a jury trial commencing on July 21, 2008. The Court has scheduled a final pretrial conference for Thursday, June 5, 2008.

On Tuesday, May 27, 2008, an issue arose between the parties with respect to trial testimony of one witness who is employed by one of the parties in this case. Because of the critical timing of this issue, we would like to address this matter with the Court at the time of the pretrial conference on June 5.

Your Honor issued a ruling on May 12, 2008 which in pertinent part denied RLI's Motion to Compel the discovery deposition of EDiS' employee, Christian McCone. The Court's Memorandum Order is listed on the docket as D.I. 138.

In light of Your Honor's ruling on May 21, 2008, we noticed the videotaped trial deposition of Mr. McCone for use as part of RLI's affirmative claim. A copy of our letter of May 21, 2008 to Victoria K. Petrone, Esquire, counsel for EDiS, is attached to this letter as Exhibit 1.

As the Court knows from the moving papers of the parties on the Motion to Compel, Mr. McCone was in the United States Army Reserves and was deployed to Kuwait for an extended period of time while

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Honorable Joseph Farnan, Jr.

May 29, 2008

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this case was pending. It has been represented by counsel that he has returned to Delaware; however, it has not been represented that he is no longer a member of the Reserves or not subject to re-deployment. Furthermore, there has been no representation that Mr. McCone will be employed by EDiS at the time of trial, especially in light of today's economic climate. RLI wishes to preserve his testimony for use at the upcoming trial in case he should, for any reason, be unavailable.

On May 27, 2008, we received via email a letter from Ms. Petrone stating that EDiS refuses to produce Mr. McCone for this deposition. Ms. Petrone's letter is attached hereto as Exhibit 2. As the Court will see, Ms. Petrone asserts that the trial deposition would be inadmissible under F.R.C.P. 32 and two cited cases.

It is respectfully submitted that Ms. Petrone's letter misses the point and purpose of RLI's Notice of Deposition. While it has been represented that Mr. McCone is "available" for trial, defense counsel cannot guarantee that one of the circumstances set forth in F.R.C.P. 32(a)(3) will not occur. Mr. McCone is an important witness who has never been deposed in this case for any purpose, and while the defense may be sufficiently confident of the likelihood of his appearance to forego his trial deposition, RLI does not share that confidence. Out of an abundance of caution, RLI wishes to preserve his testimony for use at trial. If, in fact, Mr. McCone is available to testify when the trial commences, RLI will not need to present his preserved trial testimony. However, until and unless that availability becomes a certainty, RLI is not willing to risk the possibility that unforeseen events will render Mr. McCone unavailable. Therefore, we request that the Court direct EDiS to make Mr. McCone available for a videotaped deposition to preserve trial testimony on a mutually agreeable date prior to the trial on July 21, 2008.

Thank you for your attention to this matter.

Very truly yours,



HARRY R. BLACKBURN

HRB/erl

cc: Via Electronic and First Class Mail:
Victoria K. Petrone, Esquire
Paul Cottrell, Esquire
Kevin G. Amadio, Esquire
James S. Green, Esquire

/s/ Perry F. Goldlust
PERRY F. GOLDLUST (DSB #770)
PERRY F. GOLDLUST, P.A.
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Blackburn, DeClement
Associates, P.C. Attorneys at Law

May 21, 2008

Via First Class Mail

Victoria K. Petrone, Esquire
Logan & Associates, LLC
100 W. Commons Boulevard, Suite 300
New Castle, DE 19720-2419

John E. Shields, Jr.

Of Counsel
Federico Calaf-Legrand

Also admitted to P.C.

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Re: RLI Insurance Company v. Indian River School District, et al.
United States District Court for the District of Delaware
Civil Action No. 1:05-cv-00858-JJF
Our File No. 729.004

REFS TO:
MEDFORD OFFICE

Dear Ms. Petrone:

I hope this letter finds you well.

As you know, Judge Farnan has denied our motion to take the discovery deposition of Mr. McCone. Therefore, we wish to schedule his deposition for use at the time of trial as part of RLI's affirmative claim. We have selected June 23, 2008 as the date for the deposition. Should this date present a conflict for you, please advise of other available dates in the later part of June or the beginning of July. Our office will arrange for the Court Reporter and videographer.

Thank you for your kind attention to this matter.

Very truly yours,

John E. Shields, Jr.

JES/js

cc: Perry F. Goldlust, Esquire (Via Facsimile)
Kevin Amadio, Esquire (Via First Class Mail)
Paul Cottrell, Esquire (Via First Class Mail)

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Exhibit 1

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21 West Fee Avenue, Suite D, Melbourne, Florida 32901 (321) 722-0770 Fax: (321) 722-0830

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RLI INSURANCE COMPANY

Plaintiff.

vs.

CIVIL ACTION

NO. 05-858

INDIAN RIVER SCHOOL DISTRICT

and

EDIS COMPANY

and

BECKER MORGAN GROUP, INC.

Defendants.

JURY TRIAL DEMAND

NOTICE OF DEPOSITION

To: Victoria K. Petrone, Esquire
Logan & Associates, LLC
100 W. Commons Boulevard, Suite 300
New Castle, DE 19720-2419
Attorney for EDIS Company

PLEASE TAKE NOTICE that, pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure and District of Delaware Local Civil Rules, the plaintiff, RLI Insurance Company, will take the trial deposition by videotaped oral examination of Christian McCone, of EDIS Company, at the offices of Aber, Goldlust, Baker & Over, 702 King Street, Suite 600, Wilmington, DE 19899-1675 commencing at 9:30 a.m. on June 23, 2008.

The oral examination shall be before a notary public or other person authorized by law to administer oaths, for use as evidence in this case. The deposition shall be recorded by stenographic and video graphic means. The deposition will continue from day to day until completed.

Respectfully submitted:

ABER, GOLDLUST, BAKER & OVER

/s/ Perry F. Goldlust

PERRY F. GOLDLUST (DSB #779)

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Attorneys for Plaintiff RLI Insurance Company

DATE:

Of Counsel:

HARRY R. BLACKBURN, ESQUIRE

JOHN E. SHIELDS, JR., ESQUIRE

BLACKBURN, DeCLEMENT & ASSOCIATES, P.C.

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Logan & Associates, LLC

ATTORNEYS AT LAW

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vpetrone@loganllc.com

VIA EMAIL AND FIRST CLASS MAIL

May 27, 2008

John E. Shields, Jr.
Harry R. Blackburn & Associates, P.C.
1528 Walnut Street, 4th Floor
Philadelphia, PA 19102

Re: RLI Insurance Company v. Indian River School District et al

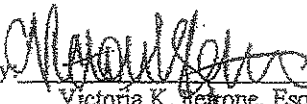
Dear John,

I am writing in response to your letter of May 21, 2008 and Notice of Deposition of Chris McCone. As you know, by its May 12, 2008 Order the Court denied RLI's Motion to Compel the deposition of McCone, noting that McCone was previously unavailable, but will now be available for trial. Deposition testimony can only be used at trial when the witness is unavailable. See, Fed.R.Civ.Pro. 32(a)(4), Salsman v. Witt, 466 F.2d 76, 79 (C.A.10 (Okla.) 1972) and G.E.J. Corp. v. Uranium Aire, Inc., 311 F.2d 749, 755 (C.A.9 (Ariz.) 1962). Since McCone's "trial" testimony would be inadmissible, the deposition would be nothing more than a discovery deposition which has already been disallowed by the Court.

In light of the Court's ruling, federal rules and caselaw, EDiS will not produce McCone for deposition.

Very truly yours,

LOGAN & ASSOCIATES, LLC

By: 
Victoria K. Petrone, Esquire

cc: (via email only)
Perry F. Goldlust, Esquire
G. Kevin Amadio, Esquire
Paul Cottrell, Esquire
Donald L. Logan, Esquire

Exhibit 2